

South Australia

# **Tobacco and E-Cigarette Products Regulations 2019**

under the *Tobacco and E-Cigarette Products Act 1997*

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## Part 1—Preliminary

### 1—Short title

These regulations may be cited as the *Tobacco and E-Cigarette Products Regulations 2019*.

### 3—Interpretation

- (1) In these regulations, unless the contrary intention appears—

*Act* means the *Tobacco and E-Cigarette Products Act 1997*;

*business name*, in relation to a business, means the business name registered for the business on the Business Names Register under the *Business Names Registration Act 2011* of the Commonwealth;

*capsule cigarette* means a cigarette that contains a capsule designed to release flavour into the cigarette;

*company name*, in relation to a business that is a company, means the company name registered in relation to the business under the *Corporations Act 2001* of the Commonwealth;

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**fruit or confectionary flavoured cigarette** means a cigarette—

- (a) that possesses, or the smoke of which possesses, a distinctive fruity, sweet or confectionary-like character; and
- (b) that is advertised in a way that might encourage young people to smoke,

but does not include a cigarette the flavouring of which is primarily of a menthol character;

**outdoor dining area** means an unenclosed public area in which tables, or tables and chairs, are permanently or temporarily provided for the purpose of public dining in the area, but does not include a part of the unenclosed public area that is separated from the part in which dining occurs by a wall or other solid barrier of not less than 2 m in height;

**packet** includes a tin or other container;

**product line**, in relation to a tobacco product, means a particular retail line of the product, distinguishable from similar products by 1 or more of the following characteristics:

- (a) the brand name, trade mark or other description of the product;
- (b) the flavour of the product;
- (c) in the case of a packet of cigarettes, cigars or cigarillos—the number or size of cigarettes, cigars or cigarillos in the packet;
- (d) in the case of cigarette or pipe tobacco—the weight of the packet in which the tobacco is sold;

**registered trade mark**, in relation to a business, means the trade mark registered for the business under the *Trade Marks Act 1995* of the Commonwealth;

**road** means an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles, and includes—

- (a) the carriageway of the road; and
- (b) the footpaths (if any) of the road; and
- (c) a median strip, traffic island or other land separating carriageways of the road; and
- (d) any other land adjoining or adjacent to the carriageway of the road that is land that has been reserved for the purposes of the road.

(2) For the purposes of these regulations—

- (a) a reference to a **tobacco product** includes a reference to a part of a tobacco product; and
- (b) text appearing on a sign, price board or price ticket will be taken to be in a **standardised font** if it is of a single style and size (whether or not handwritten).

### 3A—Fit and proper persons—prescribed offences

For the purposes of section 5A(1)(a) and (2)(a) of the Act, a person is not a fit and proper person for a particular purpose under the Act, or to occupy a position of authority in a trust or corporate entity that holds a licence, if the person has, within the previous 10 years, been found guilty or convicted of 1 or any of the following offences:

- (a) an indictable offence against the Act;
- (b) an indictable offence against the *Controlled Substances Act 1984*;
- (c) a summary offence against the *Controlled Substances Act 1984* involving nicotine;
- (d) a serious and organised crime offence within the meaning of the *Criminal Law Consolidation Act 1935*;
- (e) an indictable offence against the *Serious and Organised Crime (Control) Act 2008*;
- (f) an indictable offence involving violence;
- (g) an offence against the law of another jurisdiction that would, if committed in this State, constitute an offence prescribed by a preceding paragraph.

### 3B—Conditions of licence—information to be kept by holder of wholesale licence

- (1) For the purposes of section 9(4)(a) of the Act, the following information must be kept and retained by the holder of a wholesale licence:
  - (a) the following details in relation to each sale of tobacco products made by the holder of the licence within the previous year:
    - (i) the name and address of each person to whom the tobacco products were sold;
    - (ii) if the tobacco products were sold to a person within Australia—the ABN of the person;
    - (iii) the type and brand of tobacco products sold to each person identified in subparagraph (i);
    - (iv) the quantity (identified by type and brand) of tobacco products sold to each person identified in subparagraph (i);
    - (v) the date on which the sale was made;
    - (vi) the unit price and total price in relation to each sale;
  - (b) the following details in relation to each purchase or receipt of tobacco products by the holder of the licence within the previous year:
    - (i) the name and address of each person from whom the tobacco products were purchased or received;
    - (ii) if the tobacco products were purchased or received from a person within Australia—the ABN of the person;

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- (iii) the type and brand of tobacco products purchased or received from each person identified in subparagraph (i);
  - (iv) the quantity (identified by type and brand) of tobacco products purchased or received from each person identified in subparagraph (i);
  - (v) the date on which the tobacco products were purchased or received;
  - (vi) in the case of a purchase of tobacco products—the unit price and total price in relation to each purchase;
  - (vii) in the case of a receipt of tobacco products—the unit value and total value of the products in relation to each receipt of products;
- (c) any other information required by the Minister.
- (2) For the purposes of section 9(4)(b) of the Act, the holder of a wholesale licence must provide to the Minister the information required to be kept and retained under subregulation (1) in the annual return required to be submitted by the holder of the licence under section 11 of the Act.

### **3BA—Annual return—prescribed day**

For the purposes of section 11(1)(b) of the Act, the holder of a licence must pay the annual fee and lodge the annual return on or before—

- (a) the last day of the month in each year nominated in writing to the holder of the licence by the Minister; or
- (b) if the Minister does not nominate a month—the last day of the month in each year that is the same month in which their licence was granted.

### **3C—Possession of certain tobacco products—prescribed quantity**

For the purposes of section 33(3) of the Act, the prescribed quantity of a prescribed tobacco product is—

- (a) in the case of cigarettes—50 cigarettes; or
- (b) in any other case—50 grams or more of a prescribed tobacco product.

## **Part 2—Restrictions on supply or promotion of tobacco products and e-cigarette products**

### **Division 1—Sale or supply of tobacco products—prescribed notice**

#### **4—Prescribed notice**

For the purposes of section 39E(5) of the Act, a notice will be in the prescribed form if—

- (a) the notice is A4 size; and
- (b) it displays only the letters, words, figures and symbols of a colour and size specified in a determination of the Minister made for the purposes of this regulation and notified to the holder of a licence from time to time.

## **Division 1A—Offences relating to e-cigarette products**

### **4A—Possession of e-cigarette products for the purpose of sale—prescribed quantity**

For the purposes of section 39B(3) of the Act, the prescribed quantity of e-cigarette products is—

- (a) in the case of an e-cigarette—2 or more e-cigarettes; and
- (b) in the case of an e-cigarette product that is a liquid—60 mL or more of liquid; and
- (c) in the case of any other e-cigarette product—4 or more products.

## **Division 2—Certain advertising prohibited**

### **5—Preliminary**

Section 40 of the Act prohibits certain advertising in relation to tobacco products and e-cigarette products, however, this Division sets out, for the purposes of section 40(3) of the Act, specific circumstances in which the prohibition will not apply.

### **6—Permitted signs outside premises**

- (1) For the purposes of section 40(3)(a) of the Act, signs outside premises of a business where tobacco products are sold by retail will only be displayed in accordance with the regulations if—
  - (a) the signs comprise 1 or both of the following:
    - (i) a sign or signs displaying—
      - (A) the business name or company name of the business; or
      - (B) the registered trade mark of the business (whether or not together with the business name or company name); and
    - (ii) either—
      - (A) a single sign outside the premises with only the words, in black text no larger than 40 mm high on a white background—
        - tobacco products sold here; or
        - cigarette cartons sold here; or
        - cigarettes sold here; or
      - (B) no more than 1 such sign on each external wall of the premises that is visible to the public (or a window in such a wall); and
  - (b) each such sign is erected or displayed in accordance with any other Act or law relating to such signage.

(2) In this regulation—

*sign* includes every painted sign, mural or other sign, signboard, visual display screen, visual display image, visual display or projection device, other advertising device, lamp, globe, floodlight, banner, bunting, and streamer, including any background as well as any lettering and any advertising structure.

## 7—Permitted advertising

- (1) For the purposes of section 40(3)(c) of the Act, the following action is prescribed:
- (a) the display of a single sign inside premises where tobacco products or e-cigarette products are sold by retail, provided that the sign contains only, in black text no larger than 40 mm high on a white background, the words—
    - (i) tobacco products sold here; or
    - (ii) cigarette cartons sold here; or
    - (iii) cigarettes sold here;
  - (b) the advertisement of a tobacco product or e-cigarette product in or on a periodical—
    - (i) in hard copy that is printed outside Australia; and
    - (ii) that is not principally intended for distribution or use in Australia; and
    - (iii) that consists of no more than selling or supplying, or offering to sell or supply, the periodical;
  - (c) the advertisement of a tobacco product that is an accidental or incidental accompaniment to the publication of other matter;
  - (d) the sale or delivery of a product containing an advertisement—
    - (i) of a kind referred to in paragraph (b) or (c); or
    - (ii) of a tobacco product in or on a package containing the product (being a package in which the product is offered for sale in the ordinary course of business);
  - (e) the advertisement of a tobacco product consisting of, or reasonably incidental to, the display, at the request of a customer, of the product to the customer inside premises where the products are sold by retail;
  - (f) the advertisement of a tobacco product that is reasonably incidental to—
    - (i) the sale or delivery of the product;
    - (ii) the genuine restocking of an area in which the products are stored in accordance with the Act pending their sale;
  - (g) the advertisement of a tobacco product in premises where tobacco products are only sold by retail in cartons consisting of a single sign attached to or adjacent to a point of sale containing only, in black standardised font no larger than 40 mm high on a white background, the words "cartons only sold here";

- (h) the advertisement of a tobacco product on the premises of the business of a distributor or manufacturer of those products consisting of a sign or signs displaying—
  - (i) the business name or company name of the business; or
  - (ii) the registered trade mark of the business (whether or not together with the business name or company name),erected or displayed in accordance with any other Act or law relating to such signage;
- (i) the advertisement of a tobacco product to a group of people all of whom are involved in the manufacture, distribution or sale of those products;
- (j) the advertisement of a tobacco product on a price board in premises where such products are sold by retail, provided that—
  - (i) there is only a single such price board in the premises; and
  - (ii) the total surface area of the visible parts of the board does not exceed—
    - (A) if the price board is in the premises of a specialist tobacconist—1 m<sup>2</sup>; or
    - (B) in any other case—0.5 m<sup>2</sup>; and
  - (iii) the board consists of black text on a completely white background; and
  - (iv) the text on the board is a standardised font not exceeding 20 mm in height; and
  - (v) the information on the board does not relate to—
    - (i) fruit or confectionary flavoured cigarettes; or
    - (ii) capsule cigarettes; and
  - (vi) the information on the board is limited to any 1 or more of the following details:
    - (A) the names of particular product lines;
    - (B) the prices of particular product lines (displayed in a way that does not indicate that a particular product line has been discounted);
    - (C) the country of origin of particular product lines;
    - (D) a bar code or similar identification code used in the point of sale system of the retailer's business;
    - (F) the packet size of particular product lines (by weight or number of tobacco products contained in the packet or carton);
- (k) the advertisement of tobacco products by price tickets relating to particular product lines in premises where such products are sold by retail, provided that—

- (i) all price tickets in the premises are of an approximately equal size (but in any case not exceeding 80 mm × 40 mm); and
  - (ii) each price ticket consists of black text on a completely white background; and
  - (iii) the text on each price ticket is a standardised font not exceeding 15 mm in height; and
  - (iv) the price ticket does not relate to—
    - (i) fruit or confectionary flavoured cigarettes; or
    - (ii) capsule cigarettes; and
  - (v) the information on each price ticket is limited to any 1 or more of the following:
    - (A) the name of the product line;
    - (B) the price of the product line (displayed in a way that does not indicate that the product line has been discounted);
    - (C) the country of origin of the product line;
    - (D) a bar code or similar identification code used in the point of sale system of the retailer's business;
    - (E) any other information reasonably required for the efficient conduct of the retailer's business;
    - (G) the packet size (by weight or by number of tobacco products contained in the packet or carton).
- (4) For the purposes of this regulation, premises will be taken to be the ***premises of a specialist tobacconist*** if—
- (a) a person sells tobacco products by retail in the premises in the ordinary course of business; and
  - (b) during—
    - (i) in the case of a business that has been trading for a period of more than 1 financial year—the immediately preceding financial year; or
    - (ii) in any other case—the period for which the business has been trading,

the gross turnover of all tobacco products sold at the premises constitutes 80% or more of the gross turnover of all products sold at the premises during the relevant period; and
  - (c) in the case where the premises are situated within another shop—
    - (i) the premises are separated from the other shop by means of internal walls or doors; and
    - (ii) a person is not able to use the premises as a thoroughfare to gain entry to the other shop from outside the premises.

(5) In this regulation—

*periodical* means an issue (however described) of a newspaper, magazine, journal, newsletter, or other similar publication, issues of which are published at regular or irregular intervals.

## **Part 3—Signage requirements**

### **8—Smoking permitted signs**

The following requirements apply for the purposes of section 45(2) of the Act:

- (a) the sign must be no greater than A4 size with only the words, in either black or white text no larger than 20 mm high—
  - (i) smoking permitted; or
  - (ii) smoking permitted in this area; or
  - (iii) smoking permitted in this area only; and
- (b) the sign must be erected or displayed in accordance with any other Act or law relating to such signage.

### **9—No smoking signs in enclosed public places**

The occupier of an enclosed public place (being a place in which smoking is banned under section 46 of the Act) must display signs—

- (a) that contain words or symbols that indicate clearly that smoking (both of tobacco products and e-cigarettes) is not permitted; and
- (b) in such a way that a person (other than the occupier or an employee of the occupier) cannot readily remove or relocate the signs; and
- (c) in such numbers and in positions of such prominence that they are likely to be seen by persons at any public entrance to the place and within the place.

Maximum penalty:

- (a) in the case of a body corporate—\$10 000;
- (b) in the case of an individual—\$5 000.

Expiation fee: \$630.

### **9A—No smoking signs in long term ban areas**

For the purposes of section 52(4) of the Act, the occupier of a public area to which a declaration in Part 4 of these regulations applies must indicate the effect of the declaration to persons in the area by displaying signs—

- (a) containing words or symbols that indicate clearly that smoking (both of tobacco products and e-cigarettes) is not permitted; and
- (b) in such a way that a person (other than the occupier or an employee of the occupier) cannot readily remove or relocate the signs; and
- (c) —

- (i) in the case of the declaration in regulation 13, 17, 18, 19, 20 or 21—in such numbers and in positions of such prominence that the signs are likely to be seen by persons at any public entrance to the public area and within the area; or
- (ii) in any other case—in such numbers and in such positions of prominence within the public area as are likely to be seen by persons within the area.

## Part 4—Smoking bans in public areas—longer term

### 10—Bowden Town Square

- (1) For the purposes of section 52 of the Act, smoking is banned in the public area shown on the map in Schedule 2 Part 1 as the "declared public area", being the area in Bowden comprised of Lots 40, 42, 400 and 453, but excluding the car park.
- (2) In this regulation—

*car park* means the area shown on the map in Schedule 2 Part 1 as the "car park", being the area within Lot 42 bounded by a line commencing at the intersection of the north-eastern and south-eastern boundaries of Lot 42, then north-westerly along the north-eastern boundary of Lot 42 to its intersection with the prolongation in a north-easterly direction of the south-eastern boundary of Plant 4, then south-westerly along that boundary to the point at which that boundary (or its prolongation) intersects the south-western boundary of Lot 42, then beginning south-easterly following the boundary of Lot 42 to the point of commencement;

*Lot 40* means Lot 40 Deposited Plan 113083;

*Lot 42* means Lot 42 Deposited Plan 112982;

*Lot 400* means Lot 400 Deposited Plan 112982;

*Lot 453* means Lot 453 Deposited Plan 112982;

*Plant 4* means the built structure on Lot 42 commonly known as Plant 4;

*prolongation* means prolongation in a straight line.

### 11—Henley Square

- (1) For the purposes of section 52 of the Act, smoking is banned in all public areas in Henley Square.
- (2) In this regulation—

*Henley Square* means the following areas (being the area commonly referred to as Henley Square):

- (a) the whole of Allotment 101 Deposited Plan 45601 (excluding any area used as a car park by members of the public and any premises);
- (b) the area bounded as follows:
  - (i) on the north by Allotment 101 Deposited Plan 45601;
  - (ii) on the east by the western boundaries of the properties adjacent to the Esplanade, Henley Beach;

- (iii) on the south by a line extending generally east from the south east corner of the Henley Surf Life Saving Club;
- (iv) on the west by the sea wall.

## 12—Moseley Square Glenelg

- (1) For the purposes of section 52 of the Act, smoking is banned in all public areas in Moseley Square, Glenelg, other than an area (not being an enclosed public place, workplace or shared area) to which an Outdoor Dining Permit issued by the City of Holdfast Bay pursuant to section 200 of the *Local Government Act 1999* applies.

**Note—**

Smoking is banned in enclosed public places, workplaces or shared areas under section 46 of the Act.

- (2) In this regulation—

**Moseley Square, Glenelg** means the area in Glenelg bounded as follows: commencing at the point at which the southern boundary of Section 1510 Hundred of Noarlunga meets the eastern boundary of the Section (the western boundary of Colley Terrace), then southerly along the prolongation in a straight line of the eastern boundary of the Section to the point at which that prolongation intersects the prolongation in a straight line of the southern boundary of Lot 100 DP 76687, then westerly and southerly along that prolongation and boundary of Lot 100 to the point at which it meets the north-eastern boundary of Piece 102 DP 76687, then generally north-westerly, northerly and north-easterly along the western boundary of Lot 100 DP 76687 to the point at which it meets the southern boundary of Lot 107 DP 71400, then in a straight line by the shortest route to the south-western corner of Lot 106 DP 71400, then easterly along the southern boundary of Lot 106 and the adjoining Lots (the northern boundary of Lot 100 DP 76687) to the point of commencement.

## 13—Royal Adelaide Show

- (1) For the purposes of section 52 of the Act, smoking is banned in the following public areas for the period each year during which the annual Royal Adelaide Show is being held:

- (a) all public areas within the Adelaide show grounds, other than—

- (i) an area (not being an enclosed public place, workplace or shared area) in respect of which a licence is in force under the *Liquor Licensing Act 1997*; or

**Note—**

Smoking is banned in enclosed public places, workplaces or shared areas under section 46 of the Act.

- (ii) an area used as a car park by members of the public (other than an area designated under paragraph (b) as an area in which smoking is not permitted); or
- (iii) any other area designated by the Society as an area in which smoking is permitted;

- (b) any public area in the vicinity of a public entrance to the Adelaide show grounds designated by the Society as an area in which smoking is not permitted.

- (2) In this regulation—

*Adelaide show grounds* has the same meaning as in the *Adelaide Show Grounds (Regulations and By-laws) Act 1929*;

*Society* means the Royal Agricultural and Horticultural Society of South Australia Incorporated.

#### 14—The Parade Norwood

- (1) For the purposes of section 52 of the Act, smoking is banned in the following public areas of Norwood:

- (a) the public area bounded—

- (i) on the north by the building line on the northern side of The Parade; and
- (ii) on the south by the building line on the southern side of The Parade; and
- (iii) on the east by the western edge of Portrush Road; and
- (iv) on the west by the eastern edge of Osmond Terrace;

- (b) the laneway adjacent to the Norwood Town Hall,

(being the area shown on the map in Schedule 2 Part 2 as the *declared area*).

- (2) In this regulation—

*building line*, in relation to the Parade, means the line formed by the facades of the buildings on the relevant side of The Parade (and includes, where 2 buildings are not contiguous, a straight line running between the closest points of the facades of the buildings);

*laneway adjacent to the Norwood Town Hall* means the laneway forming the whole of the land comprised in Certificate of Title Volume 6037 Folio 165.

#### 15—Outdoor dining areas

- (1) For the purposes of section 52 of the Act, smoking is banned in a public area consisting of an outdoor dining area at any time that food is being offered for purchase, or otherwise provided, by or on behalf of the occupier of the outdoor dining area for the purpose of consumption in the area (whether or not a person is, in fact, dining in the area).

**Note—**

For example, if a hotel offers meals between 12pm and 2pm in an outdoor dining area, then smoking will be banned in the area during that period, regardless of whether anyone is actually eating in the area.

- (2) For the purposes of this regulation a person will be taken to be in an outdoor dining area if any part of the person is within the outdoor dining area.

- (3) In this regulation—

*food* does not include snack food;

*snack food* means prepackaged food of a kind generally intended to be consumed between meals.

**Example—**

This would include foods such as potato crisps, nuts and chocolate bars, but would not include, for example, sandwiches or hot chips.

## **16—Further offence where smoking occurs in outdoor dining area**

- (1) If smoking occurs in an outdoor dining area in contravention of section 52(2) of the Act, the occupier of the outdoor dining area is guilty of an offence.

Maximum penalty:

- (a) in the case of a body corporate—
  - (i) for a first offence—\$15 000;
  - (ii) for a second or subsequent offence—\$20 000;
- (b) in the case of an individual—
  - (i) for a first offence—\$5 000;
  - (ii) for a second or subsequent offence—\$10 000.

Expiation fee: \$630.

- (2) It is a defence to an offence against subregulation (1) if the defendant proves that—
- (a) he or she was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or
  - (b) he or she requested the person smoking to stop smoking and informed the person that the person was committing an offence.

## **17—No smoking at or in vicinity of premises at which early childhood services are provided**

- (1) For the purposes of section 52 of the Act, smoking is banned in all public areas—
- (a) within premises at which early childhood services are provided; or
  - (b) within 10 m of the boundary of premises at which early childhood services are provided,

at all times during which those services are being provided at the premises.

- (2) In this regulation—

*early childhood services* has the same meaning as in section 4 of the *Education and Early Childhood Services (Registration and Standards) Act 2011*.

## **18—No smoking at or in vicinity of education and children's services facility**

- (1) For the purposes of section 52 of the Act, smoking is banned in all public areas—
- (a) within an education and children's services facility; or
  - (b) within 10 m of the boundary of an education and children's services facility.

(2) In this regulation—

***education and children's services facility*** means—

- (a) premises where services of a kind to which the *Education and Care Services National Law (South Australia)* applies are provided; or
- (b) premises occupied by a children's services centre, a Government preschool, a Government school or a non-Government school all within the meaning of the *Education and Children's Services Act 2019*.

### **19—No smoking at or in vicinity of hospital**

(1) For the purposes of section 52 of the Act, smoking is banned in all public areas—

- (a) within a hospital; or
- (b) within 10 m of the boundary of a hospital.

(2) In this regulation—

***hospital*** means a site at which activities of an incorporated hospital or a private hospital (both within the meaning of the *Health Care Act 2008*) are undertaken.

### **20—No smoking at or in vicinity of residential aged care facility**

(1) For the purposes of section 52 of the Act, on and after 7 December 2026, smoking is banned in all public areas—

- (a) within a residential aged care facility; or
- (b) within 10 m of the boundary of a residential aged care facility.

(2) In this regulation—

***residential aged care facility*** means premises at which residential care is provided by an approved provider under the *Aged Care Act 1997* of the Commonwealth.

### **21—No smoking near entrance to enclosed public place, workplace or shared area**

(1) Subject to this regulation, for the purposes of section 52 of the Act, smoking is banned in all public areas at or within 10 m of any part of an entry point to an enclosed public place, workplace or shared area at all times during which the enclosed public place, workplace or shared area is open for use by persons who work at or otherwise use the enclosed public place, workplace or shared area.

(2) Subregulation (1) does not apply to an area (not being an enclosed public place, workplace or shared area)—

- (a) in respect of which a licence is in force under the *Liquor Licensing Act 1997*; or
- (b) that is at or within 10 m of any part of an entry point for an area referred to in paragraph (a) if the entry point leads directly to such a licensed area and not to an unlicensed area within the same premises; or
- (c) that is at or within 10 m of any part of an entry point to a place that—
  - (i) is used solely for residential purposes; or

- (ii) is used partly for residential purposes and partly for other purposes if the entry point is used solely for entry to or exit from that part of the place that is used for residential purposes.

**Examples—**

If an outdoor area that forms part of licensed premises under the *Liquor Licensing Act 1997* also lies within 10 m of an entry point to some other enclosed public place, workplace or shared area, the ban in subregulation (1) will not apply to that licensed outdoor area.

If a person is within 10 m of an entry point to residential premises and also within 10 m of an entry point to other premises that are an enclosed public place, workplace or shared area, the ban in subregulation (1) will not apply to the person.

- (3) In this regulation—

**entry point** means an entrance to or exit from a place.

## **22—No smoking at major events venue**

For the purposes of section 52 of the Act, smoking is banned in all public areas within a major event venue within the meaning of the *Major Events Act 2013*.

## **23—No smoking at or in vicinity of swimming facility, jetty or certain areas of beach**

- (1) For the purposes of section 52 of the Act, smoking is banned in all public areas—

- (a) at an outdoor swimming facility; or
- (b) at, or within 5 m of any part of, a jetty; or
- (c) within a sanded area of beach that is—
  - (i) between red and yellow flags temporarily erected on behalf of Surf Life Saving South Australia Inc. or its affiliated surf life saving clubs marking the boundaries for safe swimming; or
  - (ii) within a 50 m radius of a red and yellow flag referred to in subparagraph (i).

- (2) In this regulation—

**outdoor swimming facility** means premises where an outdoor swimming pool is available for use.

## **24—No smoking at underage sporting events**

- (1) For the purposes of section 52 of the Act, smoking is banned in all public areas at or within 10 m of a sporting venue at all times during which—

- (a) an organised underage sporting event is being conducted; or
- (b) a training or practice session to prepare for participation in an organised underage sporting event is being conducted.

- (2) In this regulation—

**organised underage sporting event** means a sporting event that—

- (a) is planned in advance; and

- (b) is organised or intended for, or predominantly participated in by, persons under the age of 18 years; and
- (c) is conducted according to established rules by a professional or amateur sporting body or by an educational institution; and
- (d) may be a one-off event or part of a series of events;

**sporting event** means a match, game, tournament or other event that involves the playing of, or participation in, sport;

**sporting venue** includes any part of a public place at which a sporting event occurs, and includes—

- (a) a playing field;
- (b) a track;
- (c) an arena;
- (d) a court or rink;
- (e) any permanent or temporarily erected seating at the venue;
- (f) any seating, marshalling area, warm-up area, podium or other part of the venue reserved for the use of participants in the sporting event.

## Part 5—Seizure of material or things

### 25—Seized property and forfeiture

- (1) For the purposes of section 69 of the Act, any material or thing seized by an authorised officer under the Act (**seized property**) must be dealt with in accordance with this Part.
- (2) Subject to this regulation, seized property must be held pending proceedings for an offence against the Act relating to the property.
- (3) If seized property—
  - (a) is a tobacco product, e-cigarette product or a prohibited product; or
  - (b) is, in the opinion of the Minister, likely to constitute a danger if stored pending proceedings for an offence against the Act relating to the property,the Minister may direct that the property be destroyed, whether or not a person has been, or is to be, charged with an offence in relation to it.
- (4) Property referred to in subregulation (3) may be destroyed at the place at which it was seized or at any other suitable place.
- (5) If a charge is laid, or is to be laid, for an offence in relation to property referred to in subregulation (3)(a), a representative sample of the property must be taken in accordance with regulation 26 and kept for evidentiary purposes.
- (6) If a charge is laid, or is to be laid, for an offence in relation to property referred to in subregulation (3)(b), a sample of the property that provides a true representation of the nature of the property must be taken and kept for evidentiary purposes.

- (7) If a person is convicted of an offence in relation to property destroyed in accordance with subregulation (3), the court may order the convicted person to pay the reasonable costs of storage and destruction of the property to the Minister (including, without limitation, the costs of the Minister, or a person acting at the direction of the Minister, collecting, transporting and dismantling the property as may reasonably be required for the purposes of destroying the property).
- (8) If the Magistrates Court on application by the Minister, or any court hearing proceedings under the Act, finds that seized property—
- (a) was the subject of an offence against the Act; or
  - (b) consists of material or a thing used or intended for use for, or in connection with, an offence against the Act,
- the court may make 1 or both of the following orders:
- (c) an order forfeiting the property to the Crown;
  - (d) an order requiring the person from whom the property was seized to pay the reasonable costs incurred by the Minister in storing or otherwise dealing with the property.
- (9) The Minister may, in relation to seized property—
- (a) if seized property is the subject of an order for forfeiture under this regulation—sell, destroy or otherwise dispose of the property as the Minister thinks fit; or
  - (b) in any other case—return the seized property to the person from whom it was seized.
- (10) No right of compensation arises out of any action taken by the Minister or an authorised officer under this regulation.

## **26—Representative samples**

- (1) For the purposes of this Part, a sample of seized property taken as required under regulation 25(5) will constitute a *representative sample* if the sample comprises the following:
- (a) in the case of a category A product—
    - (i) if the number of products seized does not exceed 999—the total number of products; and
    - (ii) if the number of products seized exceeds 999 but does not exceed 10 000—not less than 1 000 products; and
    - (iii) if the number of products seized exceeds 10 000 but does not exceed 100 000—not less than 5 000 products; and
    - (iv) if the number of products seized exceeds 100 000—not less than 10 000 products;
  - (b) in the case of a category B product—
    - (i) if the number of products seized does not exceed 9—the total number of products; and

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- (ii) if the number of products seized exceeds 9 but does not exceed 100—not less than 10 products; and
  - (iii) if the number of products seized exceeds 100 but does not exceed 1 000—not less than 100 products; and
  - (iv) if the number of products seized exceeds 1 000 but does not exceed 10 000—not less than 500 products; and
  - (v) if the number of products exceeds 10 000—not less than 1 000 products;
- (c) in the case of a category C product—
- (i) if the weight of the product seized does not exceed 0.2 kg—the total amount of the product; and
  - (ii) if the weight of the product seized exceeds 0.2 kg but does not exceed 2 kg—not less than 0.2 kg of the product; and
  - (iii) if the weight of the product seized exceeds 2 kg but does not exceed 10 kg—not less than 2 kg of the product; and
  - (iv) if the weight of the product seized exceeds 10 kg but does not exceed 50 kg—not less than 5 kg of the product; and
  - (v) if the weight of the product seized exceeds 50 kg but does not exceed 200 kg—not less than 20 kg of the product; and
  - (vi) if the weight of the product seized exceeds 200 kg—not less than 40 kg of the product;
- (d) in the case of a category D product—
- (i) if the amount of the product seized does not exceed 100 mL—the total amount seized; and
  - (ii) if the amount of the product seized exceeds 100 mL but does not exceed 1 000 mL—not less than 100 mL of the product; and
  - (iii) if the amount of the product seized exceeds 1 000 mL but does not exceed 10 000 mL—not less than 500 mL of the product; and
  - (iv) if the amount of the product seized exceeds 10 000 mL—not less than 1 000 mL of the product;
- (e) in any other case—a sample of the property of a quantity that provides a true representation of the nature of the property.
- (2) In this regulation—
- category A product** means seized property that consists of—
- (a) a cigarette; or
  - (b) a cigarette tube;
- category B product** means seized property that consists of—
- (a) a cigar; or
  - (b) an e-cigarette; or

- (c) an e-cigarette accessory;

**category C product** means seized property that consists of—

- (a) cigarette or pipe tobacco; or
- (b) shisha tobacco; or
- (c) tobacco prepared for chewing or sucking; or
- (d) snuff; or
- (e) any product (other than an e-cigarette product) that does not contain tobacco but is designed for smoking;

**category D product** means seized property that consists of a liquid for use in, or with, an e-cigarette.

- (3) To avoid doubt, if a category A product or a category B product is packaged with other products of the same kind, the number of products contained in the package (rather than the number of packages) is the number of products required to be taken for the purposes of this regulation.

## 27—Analysis

- (1) The Minister or an authorised officer may cause any substance seized by an authorised officer under Part 5 of the Act to be analysed by, or under the supervision of, an analyst.
- (2) An analyst must, on the completion of an analysis under this regulation—
  - (a) certify in the prescribed form the results of the analysis; and
  - (b) provide the certificate of analysis to the person who initiated the analysis.
- (3) For the purposes of subregulation (2)(a), a certification will be in the **prescribed form** if it—
  - (a) contains the full name and business address of the analyst; and
  - (b) sets out the results of the analysis; and
  - (c) is signed and dated by the analyst.

## 28—Evidentiary provisions

- (1) For the purposes of section 87(2)(h) of the Act, in any proceedings for an offence against the Act, an apparently genuine document purporting to be signed by an analyst and to certify that an analysis of a substance referred to in the certificate was carried out by, or under the supervision of, the analyst will, in the absence of proof to the contrary, be proof of any facts stated in the certificate—
  - (a) tending to identify the substance analysed for the purposes of this Act; and
  - (b) as to the weight, amount or quantity of the substance analysed; and
  - (c) relating to the nature and results of the analysis.
- (2) For the purposes of section 87(2)(h) of the Act, in any proceedings for an offence against the Act, an apparently genuine document purporting to be signed by the Minister and to certify that a person named in the certificate is an analyst will, in the absence of proof to the contrary, be proof of the matter certified.

- (3) For the purposes of section 87(2)(h) of the Act, in any proceedings for an offence against the Act, an apparently genuine document purporting to be signed by the Minister and to certify that seized property is a tobacco product or an e-cigarette product will, in the absence of proof to the contrary, be proof of the matters so certified.
- (4) For the purposes of section 87(2)(h) of the Act, in any proceedings for an offence against the Act, if a representative sample of a tobacco product, e-cigarette product or prohibited product is taken under regulation 25(5), an apparently genuine document purporting to be signed by the Minister and to certify that a sample represents a specified quantity of the product is, in the absence of proof to the contrary, proof of the matter certified.

## Part 6—Miscellaneous

### 29—Evidence of age

For the purposes of sections 39E(2)(a) and 70AB(1) of the Act, the following kinds of evidence are prescribed:

- (a) a current photographic driver's licence issued under the *Motor Vehicles Act 1959* or under a corresponding law of another State or a Territory;
- (b) a current photographic Proof of Age card issued by the Registrar of Motor Vehicles or by a corresponding public authority of the Commonwealth or another State or a Territory;
- (c) a current passport issued by the Commonwealth or under the law of another country, bearing a photograph of the person and enabling the age of the person to be determined;
- (d) a current photographic Keypass identification card issued by—
  - (i) if the card was issued before 23 November 2013—Alfa Omega Nominees Pty Ltd, trading as Commonwealth Key and Property Register; or
  - (ii) if the card was issued on or after 23 November 2013—Australian Postal Corporation.

### 30—Embargo notices—prescribed particulars

For the purposes of section 66B(4)(a) of the Act, an embargo notice must contain the following particulars:

- (a) a description of the thing to which the notice applies;
- (b) either the name of the person to whom the notice is to be given or a statement that the notice is to be affixed to the thing to which it applies;
- (c) the name or identification number of the authorised officer who issued the notice;
- (d) the date on which the notice was given or affixed (as the case may be).

## **31—Register**

For the purposes of section 73(2)(e) of the Act, the following details are prescribed:

- (a) whether a compliance notice has been given to the holder of the licence under section 69E of the Act and, if so, the date on which the notice was given;
- (b) whether a default notice has been given to the holder of the licence and, if so, the date on which the notice was given;
- (c) whether the Minister has taken disciplinary action against the holder of the licence under section 69G of the Act and, if so, the date on which the action was taken;
- (d) the following details in relation to each closure order made in respect of premises from which the holder of a licence carries on business:
  - (i) whether the closure order was an interim closure order or a long term closure order;
  - (ii) the date on which the order was made;
  - (iii) the duration of the order.

## **Schedule 1—Transitional provision**

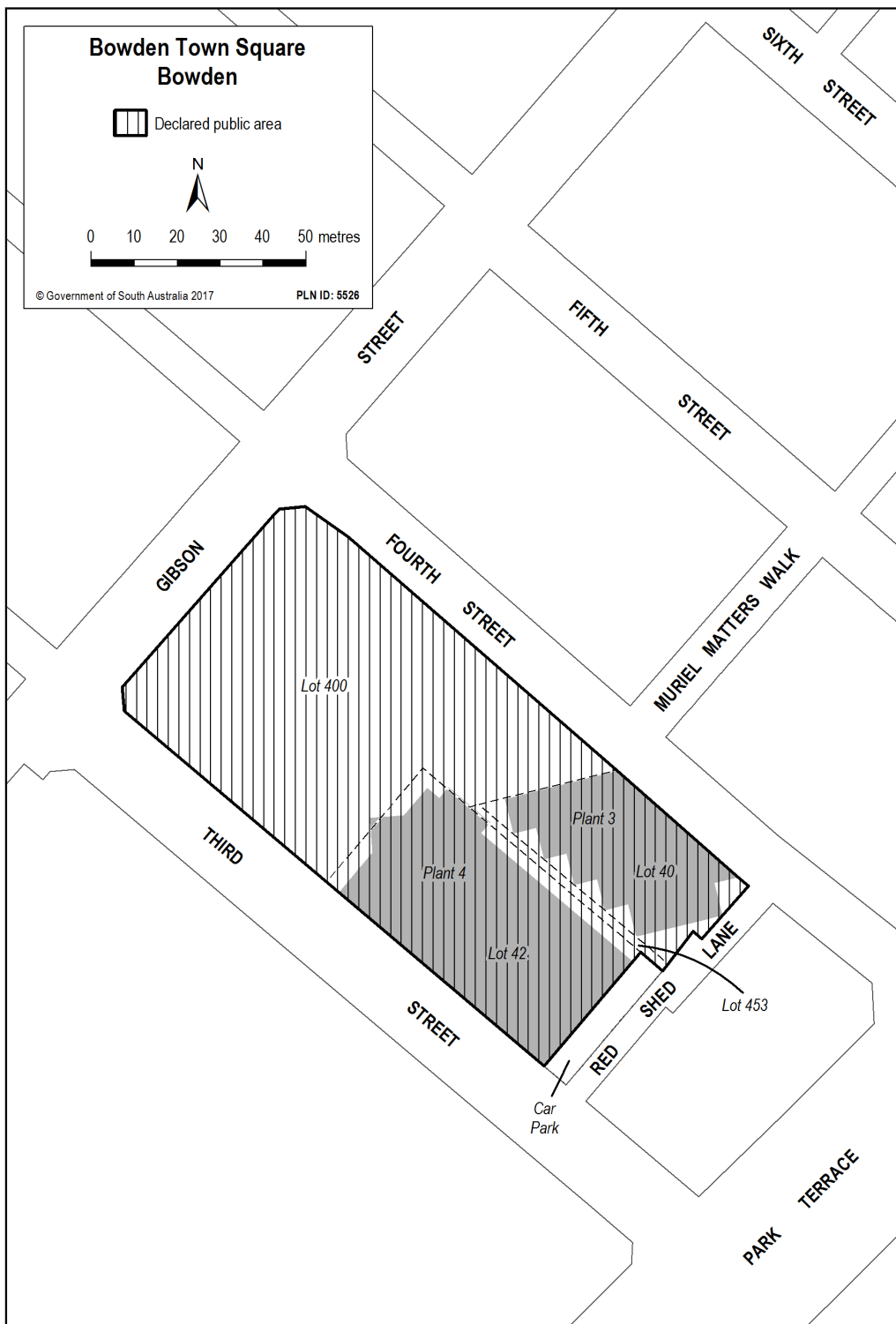
### **1—Transitional provision**

Pursuant to section 87(4)(a) of the Act, until 1 February 2025—

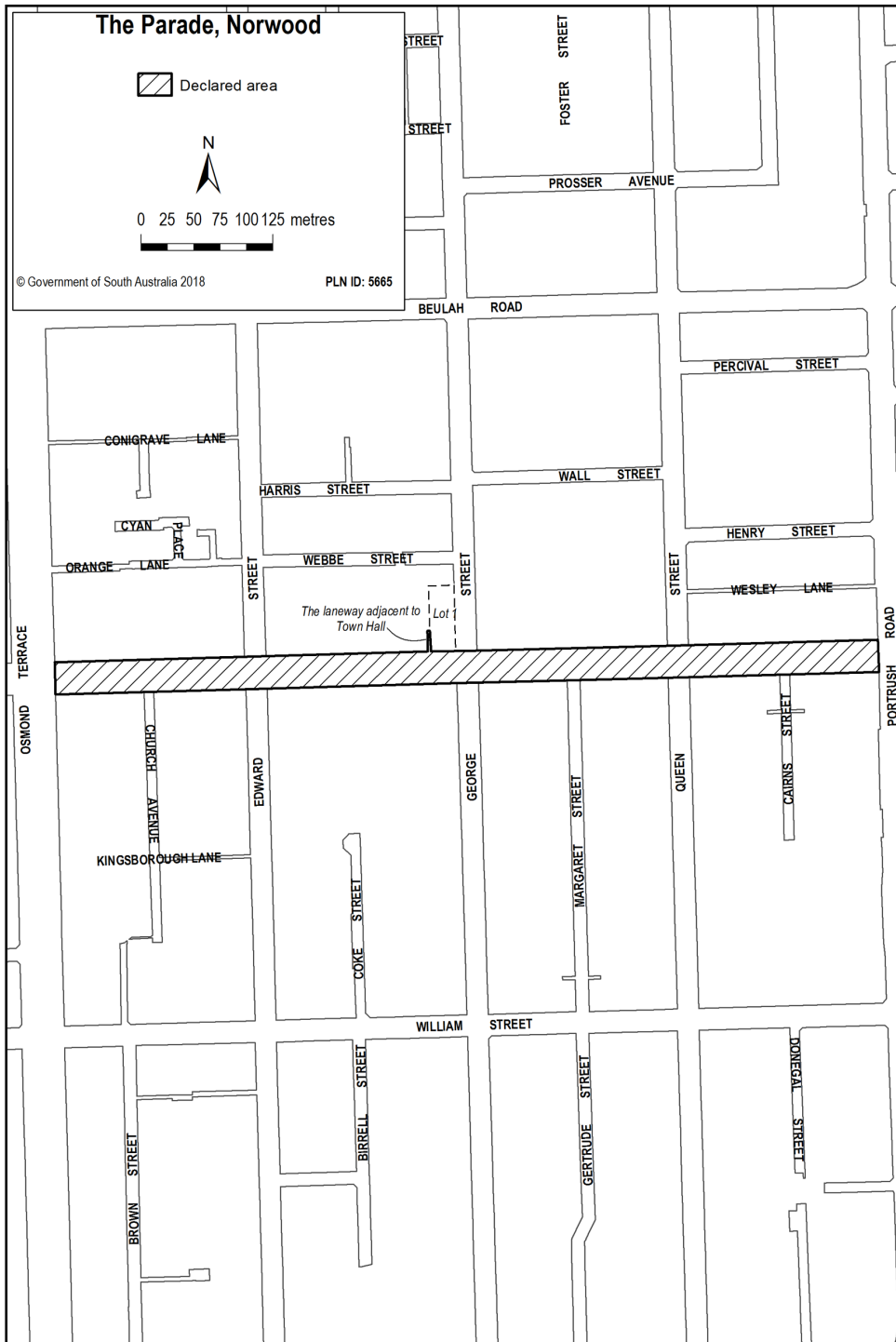
- (a) section 37 of the Act does not apply to the sale of cigarettes or any other tobacco products by means of a vending machine; and
- (b) section 39E(5a) of the Act does not apply to the sale or supply of an e-cigarette product by a person authorised under any other Act or law to sell or supply e-cigarette products.

## Schedule 2—Maps of declared public areas

### Part 1—Bowden Town Square declared public area (regulation 10)



## Part 2—The Parade Norwood declared public area (regulation 14)



## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation revoked by principal regulations

The *Tobacco and E-Cigarette Products Regulations 2019* revoked the following:

*Tobacco Products Regulations 2004*

*Tobacco Products (Smoking Bans in Public Areas—Longer Term) Regulations 2012*

### Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2019	8	<i>Gazette 31.1.2019 p376</i>	31.3.2019: r 2
2021	146	<i>Gazette 30.9.2021 p3649</i>	1.10.2021: r 2
2023	93	<i>Gazette 25.8.2023 p3121</i>	31.8.2023: r 2
<b>2023</b>	<b>119</b>	<b><i>Gazette 7.12.2023 p4053</i></b>	<b>1.3.2024 except r 4 insofar as it inserts r 20—7.12.2024: r 2</b>
<b>2024</b>	<b>98</b>	<b><i>Gazette 7.11.2024 p4116</i></b>	<b>7.12.2024 immediately after r 4 of 119/2023 insofar as it inserts r 20: r 2</b>
<b>2024</b>	<b>110</b>	<b><i>Gazette 28.11.2024 p4301</i></b>	<b>28.11.2024 except Pt 3—13.12.2024: r 2</b>

### Provisions varied

New entries appear in bold.

Provision	How varied	Commencement
Pt 1		
r 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.10.2021</i>
r 3		
r 3(1)		
product line	amended by 110/2024 r 3	28.11.2024
r 3A	inserted by 146/2021 r 4	1.10.2021
	deleted by 110/2024 r 4	28.11.2024
	<b>inserted by 110/2024 r 13</b>	<b>13.12.2024</b>
r 3B	inserted by 93/2023 r 3	31.8.2023

	deleted by 110/2024 r 4	28.11.2024
	<b>inserted by 110/2024 r 13</b>	<b>13.12.2024</b>
<b>r 3BA</b>	<b>inserted by 110/2024 r 13</b>	<b>13.12.2024</b>
r 3C	inserted by 93/2023 r 3	31.8.2023
Pt 2		
Div 1	substituted by 110/2024 r 5	28.11.2024
Div 1A	inserted by 110/2024 r 5	28.11.2024
Div 2		
r 6		
r 6(1)	amended by 110/2024 r 6(1), (2)	28.11.2024
r 7		
heading	amended by 110/2024 r 7(1)	28.11.2024
r 7(1)	(a)(iv)—(vi) deleted by 110/2024 r 7(2)	28.11.2024
	amended by 110/2024 r 7(3)—(9), (11), (12), (14)	28.11.2024
	(j)(vi)(E) deleted by 110/2024 r 7(10)	28.11.2024
	(k)(v)(F) deleted by 110/2024 r 7(13)	28.11.2024
<i>rr 7(2) and (3)</i>	<i>deleted by 110/2024 r 7(15)</i>	<i>28.11.2024</i>
r 8	<i>deleted by 110/2024 r 8</i>	<i>28.11.2024</i>
<i>Pt 3 before substitution by 110/2024 r 9</i>		
r 9		
r 9(1)	<i>amended by 119/2023 r 3</i>	<i>1.3.2024</i>
Pt 3	substituted by 110/2024 r 9	28.11.2024
Pt 4		
r 16		
r 16(1)	amended by 110/2024 r 10	28.11.2024
rr 17—19	inserted by 119/2023 r 4	1.3.2024
<b>r 20</b>	<b>inserted by 119/2023 r 4</b>	<b>7.12.2024</b>
r 20(1)	<b>amended by 98/2024 r 3</b>	<b>7.12.2024</b>
rr 21—24	inserted by 119/2023 r 4	1.3.2024
<b>Pt 5</b>	<b>inserted by 110/2024 r 14</b>	<b>13.12.2024</b>
Pt 6	inserted by 110/2024 r 11	28.11.2024
<b>r 31</b>	<b>inserted by 110/2024 r 15</b>	<b>13.12.2024</b>
Sch 1	substituted by 110/2024 r 12	28.11.2024
<i>Sch 3</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.10.2021</i>

## Historical versions

1.10.2021  
31.8.2023  
1.3.2024  
28.11.2024

7.12.2024 (electronic only)